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ANNUAL REPORT

For the Province of Ontario
Pursuant to Section 195
of *The Criminal Code of Canada*

January 1, 1998 to December 31, 1998

Ministry of
the Attorney General



Ontario

Ministère du
Procureur général

**ANNUAL REPORT FOR THE PROVINCE OF ONTARIO
PURSUANT TO SECTION 195 OF THE *CRIMINAL CODE***

Introduction

This Report, prepared pursuant to the provisions of s.195 of the *Criminal Code* (the "*Code*"), sets out statistical data in respect of the following two forms of judicially authorized interceptions:

- (a) Authorizations issued by a judge of the Ontario Court (General Division) pursuant to ss.185 and 186 of the *Code* for the interception of private communications, and
- (b) Warrants issued by a judge of either the Ontario Court (General Division) or (Provincial Division) pursuant to s.487.01(4) of the *Code*.

The Report does **not** address the frequency or use of interceptions conducted pursuant to ss. 184.1, 184.2 or 184.4.

Section 487.01 of the Code

Section 487.01 of the *Criminal Code*, often referred to as the general Warrant provision, permits application to be made to either the Provincial or General Division of the Ontario Court for a Warrant authorizing,

...an officer to observe, by means of a television camera or other similar electronic device, any person who is engaged in activity in circumstances in which the person has a reasonable expectation of privacy...

Pursuant to s.487.01(5), certain sections of Part VI of the *Code* are made applicable to Warrants issued pursuant to s.487.01(4), including s.195, which prescribes what is to be included in the annual reports of the Attorneys General.

Section 185 of the Code

Section 185 of the *Code* requires, in part, that an application to a Judge of the Ontario Court (General Division) for an Authorization to permit the interception of private communications must be made by an agent specially designated in writing by the Attorney General of Ontario. As in previous

years, these designated agents are Crown counsel working in various Crown Attorney's offices throughout Ontario, or at the Crown Law Office - Criminal in Toronto. Although s.188 of the *Code* allows for the possibility of peace officers to be designated in writing for the specific purpose of making applications where urgent circumstances exist, no designations of this nature were made in 1998

Before an application for an Authorization to intercept private communications is made, an agent undertakes a careful review of the investigation conducted by the police to ensure that the rigorous threshold standards set out in s.186 of the *Code* have been satisfied, which, with s.185, authorizes a judge of the Ontario Court (General Division) to grant an application for the interception of private communications only when:

- (a) that it would be in the best interests of the administration of justice to do so;

and

- (b) that other investigative procedures have been tried and have failed, or are unlikely to succeed other or that the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures.

From January 1 to December 31, 1998, 65 Authorizations were issued from the Ontario Court (General Division) pursuant to ss.185 and 487.01(4) of the *Code*. The following table places these 65 Authorizations/Warrants in the context of previous years:

Year	Number of Authorizations Issued
1981	149
1982	171
1983	155
1984	127
1985	132
1986	115
1987	82
1988	51
1989	50
1990	107
1991	103
1992	98
1993	81
1994	51
1995	76
1996	77
1997	73
1998	65

Applications under s.185 of the Code

The 65 Authorizations/Warrants granted in 1998 related to 41 separate police investigations. As s.186(4)(e) requires that the duration of an Authorization may not exceed 60 days, the nature and extent of some investigations require that a number of successive applications be made. While s.186(6) of the *Code* provides that an Authorization may be renewed, it is the practice of agents in Ontario to request that a fresh Authorization be granted and to file, in support thereof, information



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through affidavit setting out the most recent results of the investigation. This approach accounts for the fact that no Authorizations were renewed in Ontario in 1998.

Of the 41 police investigations conducted in 1998, 29 involved two, three or four Authorizations/Warrants, as set out in the table below:

Frequency of Authorizations/Warrants obtained <i>per</i> investigation	Actual Number of Investigations	Actual Number of Authorizations/Warrants
1	30	30
2	7	14
3	1	3
4	3	12
Total	41	65

Often, successive Authorizations in respect of the same general matter under investigation are granted on different terms than the original Authorization. Such subsequent Authorizations may vary from previous ones as to the named objects, the places of interception, the manners in which interceptions are permitted to occur and the enumerated offences. These changes correspond to the progress of the investigation as new information comes to light and as the focus of the inquiry expands or is narrowed. However, for the purposes of this Report, where multiple Authorizations/Warrants have been requested in respect of the same investigation, the relevant statistical data relating to the following areas identified in s.195(2) have not been "double counted":

- s.195(2)(d): the number of persons identified in an Authorization against whom proceedings were commenced....
- s.195(2)(e): the number of persons not identified in an Authorization against whom proceedings were commenced...
- s.195(2)(l): the number of persons arrested whose identity became known...

Section 195(2)(i) requires that the offences in respect of which Authorizations were given be identified. This Report enumerates both substantive offences and the associated offences of attempt, conspiracy, counselling and accessory after the fact. Some ancillary offences are specifically provided for in the *Code*, such as the offence of attempted murder, contrary to s. 239 or accessory to murder after the fact, contrary to s.240. In addition, the *Code* also creates the general offences of counselling, accessory after the fact, attempt and conspiracy in ss. 22, 23, 24 and 465, respectively. In an effort to present the data in this area in a uniform fashion, these associated offences appear in the context of the substantive offence to which they relate.

The lawful and authorized interception of private communications continues to be a valuable investigative aid in the prevention, detection and prosecution of criminal activity. In many instances in 1998, prosecutions were conducted primarily on the basis of evidence tendered in the form of recorded intercepted private communications.

s. 195(2)(a)	The number of applications made for authorizations:	65
(b)	The numbers of applications made for renewal of authorizations:	0
(c)	The number of applications referred to in paragraphs (a) and (b), above, that were granted:	65
	The number of applications referred to in paragraphs (a) and (b), above, that were refused:	0
	The number of Applications referred to in paragraphs (a) and (b), above, that were granted subject to terms and conditions:	65

s. 195(2)(d)	The number of persons identified in an Authorization against whom proceedings were commenced at the instance of the Attorney General of Ontario in respect of:	
(i)	an offence specified in the authorization:	57
(ii)	an offence other than an offence specified in the authorization but in respect of which an authorization may be given:	26
(iii)	an offence in respect of which an Authorization may not be given:	3
s. 195(2)(e)	The number of persons <u>not</u> identified in an Authorization against whom proceedings were commenced at the instance of the Attorney General of Ontario in respect of:	
(i)	an offence specified in such an authorization:	12
(ii)	an offence other than an offence specified in such an authorization but in respect of which an authorization may be given:	16
(iii)	an offence other than an offence specified in such an authorization and for which no such authorization may be given: and whose commission or alleged commission of the offence became known to a peace officer as a result of an interception of a private communication under an Authorization.	0
s.195(2)(f)	The average period for which Authorizations were given:	59 days

s.195(2)(g)	<p>The number of Authorizations that by virtue of one or more renewals thereof were valid,</p> <p>for more than 60 days</p> <p>for more than 120 days</p> <p>for more than 180 days</p> <p>for more than 240 days</p>	<p>0</p> <p>0</p> <p>0</p> <p>0</p>
s.195(2)(h)	The number of persons given notifications pursuant to s. 196:	488
s.195(2)(i)	The offences in respect of which authorizations were granted:	
	<p>s.81 Using Explosives</p> <p>conspiracy</p> <p>attempt</p> <p>accessory</p> <p>counselling</p>	<p>2</p> <p>2</p> <p>2</p> <p>2</p> <p>2</p>
	<p>s.82 Possessing Explosives</p> <p>conspiracy</p> <p>attempt</p> <p>accessory</p> <p>counselling</p>	<p>2</p> <p>2</p> <p>2</p> <p>2</p> <p>2</p>
	<p>s.85 Using a Firearm</p> <p>conspiracy</p> <p>attempt</p> <p>accessory</p> <p>counselling</p>	<p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p>

	s. 90 Possession of Restricted Weapon conspiracy attempt accessory counselling	1 1 1 1 1
	s. 95 Importing and Exporting Prohibited Weapons conspiracy attempt accessory counselling	1 1 1 1 1
	s. 97 Sell to a Person with no Firearm Certificate conspiracy attempt accessory counselling	1 1 1 1 1
	s. 122 Breach of Trust conspiracy attempt accessory counselling	1 1 1 1 1
	s. 139 Obstructing Justice conspiracy attempt accessory counselling	5 2 0 2 2
	s. 202 Betting, Pool-selling, Bookmaking conspiracy attempt accessory counselling	1 1 0 0 0
	s. 212 Procuring a Person to have illicit sex conspiracy attempt accessory counselling	2 2 2 2 2

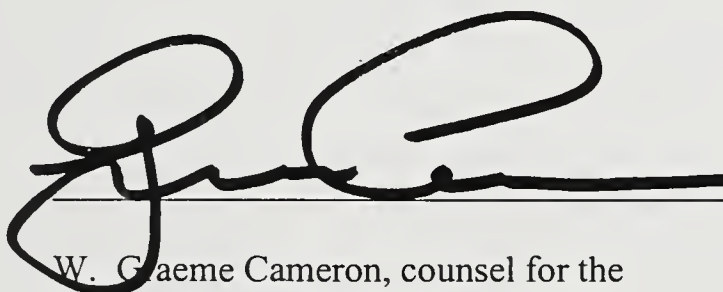
	s. 235 Murder	37
	conspiracy	33
	attempt	33
	accessory	33
	counselling	33
	s. 239 Attempted Murder	5
	conspiracy	1
	attempt	0
	accessory	1
	counselling	1
	s. 264.1 Uttering Death Threats	2
	conspiracy	2
	attempt	1
	accessory	1
	counselling	1
	s. 267 Assault causing Bodily Harm	3
	conspiracy	3
	attempt	2
	accessory	2
	counselling	2
	s. 268 Aggravated Assault	1
	conspiracy	1
	attempt	0
	accessory	0
	counselling	0
	s. 269 Unlawfully causing bodily harm	1
	conspiracy	1
	attempt	0
	accessory	0
	counselling	0
	s. 271 Sexual Assault	1
	conspiracy	1
	attempt	1
	accessory	1
	counselling	1

	s. 279 Kidnapping conspiracy attempt accessory counselling	1 2 0 0 0
	s. 334 Theft conspiracy attempt accessory counselling	6 6 5 5 5
	s. 342 Use of credit card obtained by crime conspiracy attempt accessory counselling	2 2 2 2 2
	s. 342.1 Unauthorized use of computer conspiracy attempt accessory counselling	1 1 1 1 1
	s. 344 Robbery conspiracy attempt accessory counselling	8 8 8 8 8
	s. 346 Extortion conspiracy attempt accessory counselling	2 1 1 1 1
	s. 348 Break & Enter conspiracy attempt accessory counselling	2 2 2 2 2

	s. 354 Possession of Property Obtained by Crime	12
	conspiracy	12
	attempt	12
	accessory	12
	counselling	12
	s. 380 Fraud	6
	conspiracy	6
	attempt	5
	accessory	5
	counselling	5
	s.433 Arson	5
	conspiracy	5
	attempt	5
	accessory	5
	counselling	5
	s.434 Arson/Disregard for Human Life	1
	conspiracy	1
	attempt	1
	accessory	1
	counselling	1
	s.449 Making Counterfeit Money	3
	conspiracy	2
	attempt	2
	accessory	2
	counselling	3
	s.450 Possession of Counterfeit Currency	2
	conspiracy	2
	attempt	2
	accessory	2
	counselling	2
	s.452 Uttering Counterfeit Currency	3
	conspiracy	3
	attempt	3
	accessory	3
	counselling	3

	s. 462.31 Laundering Proceeds of Crime conspiracy attempt accessory counselling	5 5 5 5 5
	s. 465 Prison Breach conspiracy attempt accessory counselling	1 1 1 0 1
s.195(2)(j)	A description of all classes of places specified in the authorization and the number of Authorizations in which each such class of place was specified: <div> Residences: 216 Hotel rooms: 2 Commercial Establishments 63 Vehicles 37 Correctional Institutions 46 </div>	
s.195(2)(k)	A general description of the methods of interception involved in each interception under an authorization: <div> Room probes: 45 Telephone interceptors: 292 Bodypacks: 8 Video: 5 Other : 5 </div>	
s.195(2)(l)	The number of persons arrested whose identity became known to a peace officer as a result of an interception under an authorization:	36
s.195(2)(m)	The number of criminal proceedings commenced at the instance of the Attorney General of Ontario in which private communications obtained by interception under an authorization were adduced in evidence: 53 The number of such proceedings that resulted in a conviction: 26 The total number of person acquitted in such proceedings: 6	

	The number of proceedings commenced but not concluded:	23
s.195(2)(n)	The number of criminal investigations in which information obtained as a result of the interception of a private communication under an authorization was used although the private communication was not adduced in evidence in criminal proceedings commenced by the Attorney General of Ontario as a result of the investigations:	27
s.195(3)(a)	The number of prosecutions commenced against officers or servants of Her Majesty in right of Canada or members of the Canadian Forces for offences under section 184 or 193:	0



W. Graeme Cameron, counsel for the
Attorney General of Ontario

